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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 909 of 1997

with

CRIMINAL MISC. APPLICATION No 4533 OF 1997

with

CRIMINAL MISC. APPLICATION No 4967 OF 1997

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE MR. K.SREEDHARAN and

MR. JUSTICE M. S. SHAH

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1. Whether Reporters of Local Papers may be allowed

[illegible]

to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution

of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

LOK ADHIKAR SANGH

Versus

STATE OF GUJARAT

Appearance:

MR GIRISH PATEL for Petitioner

MR PG DESAI, PUBLIC PROSECUTOR for Respondent No. 1

MRS KA MEHTA with MR ANAND DAVE, MR PM THAKKAR WITH

M/S THAKKER ASSOCIATES and MR ND NANAVATI with M/S

NANAVATY ASSOCIATES, Advocates for the Police

Officers.

CORAM : THE CHIEF JUSTICE MR. K.SREEDHARAN and

Date of decision: 10/02/1998

CAV JUDGEMENT (Per Shah, J.)

This public interest petition is filed by Lok Adhikar Sangh claiming to be a human rights organisation committed to the defence and protection of civil liberties and democratic rights of the people and particularly of the poor and the down trodden in the State of Gujarat. The petition is filed on behalf of Nitaben Goswami, Sarpanch of village Dadva in Bhavnagar District, and her husband Dineshpuri who are alleged to have been subjected to brutal and ruthless torture by anti-social elements sometimes in collusion with the police officers and sometimes with the connivance of police officers. The grievance in the present petition centres round the arrest of Nitaben during night hours and allegations of handcuffing and parading of Nitaben and her husband in the village by police officers of Bhavnagar District.

THE ALLEGED INCIDENT AND THE BACKGROUND

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#. The facts leading to filing of the present petition, as averred on behalf of Nitaben and her husband, are as under :-

2.1 Nitaben Goswami and her husband Dineshpuri Goswami have been residing at village Dadva, Taluka Umralla of Bhavnagar District. In May, 1991, some anti-social and head strong persons from Dadva village started harassing Dineshpuri Goswami. On July 6, 1991, Nitaben was forcibly taken away and gang raped by the persons named in the petition and by their associates. The local police did not take any action in Criminal Complaint No. 91/91 registered with Umralla Police Station, but her tragic story was published in the newspapers and, therefore, the petitioner - Lok Adhikar Sangh took up her case and filed a writ petition against the State and the police authorities. This Court directed the learned Judicial Magistrate, Bhavnagar to hold inquiry under Section 202 of Cr.P.C. and also directed the police to provide protection to the couple. After inquiry, several accused were arrested and ultimately the criminal case was committed to the Sessions Court, Bhavnagar where the trial is pending. That is registered as Criminal Case No. 791 of 1992. Some of the police officers are also arraigned as accused in the above case, for the offence punishable under

Section 202 IPC.

2.2 After the aforesaid petition, Nitaben and her husband continued to be harassed. During pendency of the criminal case before the Sessions Court at Bhavnagar, after the evidence of Nitaben was recorded, her husband was assaulted by some of the accused and their bail was cancelled. Even Nitaben's application for appointment of Special Public Prosecutor came to be granted by the Government after intervention of this Court.

2.3 Nitaben and her husband bravely faced all these sufferings, without succumbing to the various threats and pressures and Nitaben was ultimately elected as the Sarpanch of Dadva village and at present also she is holding the post of Sarpanch of that village. In the village, there is a temple of Randalma which is visited by a number of pilgrims and the temple has substantial income. According to Nitaben and her husband, the affairs of the temple are managed by the trustees who are the relatives of the accused in the gang rape case. In spite of the income of this temple being substantial, the trustees have been disclosing meagre amount while submitting reports to the Charity Commissioner and other concerned officers. Nitaben in her capacity as the Sarpanch has been reporting to the Charity Commissioner time and again about the mismanagement of the temple funds and other activities by the trustees and their relatives and, therefore, the persons in the mismanagement of temple funds are annoyed against Nitaben and her husband. Last year, when the Charity Commissioner had issued notice of hearing to the parties concerned, the husband of Nitaben was involved in cases under the Atrocities Act and ultimately he was acquitted. The village people also made a representation to the Collector on January 16, 1996 protesting against the mismanagement of the affairs of the temple and harassment being meted out to Nitaben and her husband.

2.4 On July 4, 1997, Nitaben and her husband Dineshpuri Goswami received notice of hearing from the Charity Commissioner in respect of the pending inquiry. On the very same night, Mamlatdar Shri Gohil and Police Sub Inspector D K Solanki came to the village along with police party and requested Nitaben, Sarpanch of the village, to take care of the affairs of the temple in absence of the priest for a limited purpose and from that day onwards Nitaben sent all the temple offerings in cash by Money Orders to the Mamlatdar and attended to the problems of the pilgrims visiting the temple. On July 8, 1997, Circle Police Inspector M M Parmar together with

PSI D K Solanki and other constables came to the village temple and at around 4.00 O'clock in the afternoon some of the people belonging to the other community, including those involved in the management of the temple, threw stones at the house of Nitaben. The Circle Police Inspector told Nitaben and Dineshpuri to leave the village with their children immediately in his jeep.

2.5 Nitaben and her husband proceeded towards Bhavnagar to express their grievance before the Collector. On July 9, 1997 they submitted their representation to the Deputy Collector and a copy was also submitted to the D.S.P. On July 10, 1997, Nitaben and Dineshpuri went on hunger strike in front of the Collector's Office, but nobody paid attention to them. On July 11, 1997, the police constable who was in charge of their protection, complained of illness and left and at around 4.00 P.M. a lady constable, Savitaben Chauhan, came to the place and started beating Nitaben who was at the relevant time running eighth month of her pregnancy. Nitaben was also kicked in the stomach. Dineshpuri lodged a complaint with the police station at Bhavnagar. Nitaben was also taken to the hospital for medical check up and treatment.

2.6 On the next day i.e. on 12th July, 1997, Nitaben and her husband were discharged and, therefore, Nitaben and her husband left for Ahmedabad. Since by the time, they reached Vallabhipur, it was evening they went to village Melana to stay at their friend Abhesing's place. A police party came to their friend's place at around 11.30 P.M. and arrested Nitaben and her husband Dineshpuri without informing them about the offence for which they were being arrested and were not produced before any Magistrate for almost 22 hours.

2.6 Thus, Nitaben and her husband Dineshpuri were arrested on July 12, 1997 at about 11.30 P.M. i.e. during the night hours, by PSI D K Solanki, lady constable Savitaben Chauhan and a few other police constables. Before their arrest, they were beaten and thereafter taken to Umralla Police Station in a jeep. In the jeep, they were threatened not to go ahead with their complaint lodged against Savitaben Chauhan or face dire consequences. At Umralla Police Station, they were put into lock-up and on July 13, 1997, at around 5.00 O'clock in the evening Nitaben and her husband were taken to their village Dadva. First they were taken to the police station of that village and then they were handcuffed. Their hands were tied up with ropes and they were made to wear hanging slates around their necks wherein it was

written in Gujarati that whoever helps Nitaben and her husband would face the same consequences. Thereafter, they were paraded in the entire village by the police party consisting of PSI D K Solanki, constable Savitaben Chauhan and other police constables. Thereafter they were brought in the police jeep to Taluka Police Station at Umralla and from there they were taken to Vallabhipur at the residence of the learned Magistrate at about 9.00 P.M. They were then informed that they were arrested in respect of a police complaint filed by the accused involved in stone throwing and associates of the accused in the gang rape case and that they were charged with the offences punishable under Sections 296, 506 (2), 504 and 114 of the Indian Penal Code. That complaint (C.R. No. 38 of 1997) was lodged before the Umralla Police Station on July 7, 1997 alleging that on July 4, 1997 at about 6.30 P.M. they had threatened to kill Manjula, wife of priest Harnamsinh (complainant) with a sword and knife. [That is, when they (Nitaben and her husband) were under protection of one armed police constable and another unarmed police constable]

2.8 Even when they were taken to the residence of the learned Magistrate, they were surrounded by police and watched by a number of people including those involved in stone throwing and the relatives of the accused in the rape case. Hence, they could not say anything to the learned Magistrate about the treatment meted out to them. Immediate release from the police custody on bail was the first thing they were desperately looking forward to. Even after their release, those who bailed them out were also threatened by the police and other relatives of the accused in the rape case. Thereafter Nitaben and her husband Dineshpuri went to Ahmedabad and from there they sent their complaint dated July 17, 1997 to the District Superintendent of Police, Bhavnagar by post.

#. On the basis of the above averments, it is submitted in the petition that there was gross violation of the fundamental rights of Nitaben and her husband Dineshpuri, at the hands of the police personnel of the State, especially their fundamental rights under Articles 14, 19 and 21 of the Constitution. Relying on the decisions of the Honourable Supreme Court in a number of cases, they have submitted that there were not only violation of human rights but also flouting of the directions given by the Apex Court regarding arrest, handcuffing etc. amounting to contempt of Court, apart from commission of crimes under the Indian Penal Code and gross misconduct. The petitioner, therefore, has prayed that the respondent Government be directed to take action

against the police officers by initiating appropriate criminal proceedings, departmental proceedings and a high level judicial officer be appointed to investigate into the complaint of the victims. The petitioner also prayed for a direction to the State Government to pay compensation to Nitaben and her husband for the gross and fragrant violation of their fundamental rights under Articles 14, 19 and 21 of the Constitution.

ORDERS OF THIS COURT AND INQUIRY BEFORE THE SESSIONS JUDGE AND LAW OFFICER OF THIS COURT

#. On July 22, 1997, this Court directed that a copy of the petition be served on the learned Public Prosecutor and fixed the hearing of the petition on July 24, 1997. On that day, at the request of the learned Addl. P.P. the hearing was adjourned to July 25, 1997 on which day, the learned Addl. P.P. made submissions in the presence of the D.S.P. who was present in the Court. The matter was heard at length, but the Court recorded in the order its dissatisfaction with the submissions made by the learned A.P.P. and directed the authorities to file affidavit in reply by July 29, 1997.

#. On July 29, 1997, the learned A.P.P. produced the report of the Deputy Superintendent of Police Mr Jotangia who submitted in his report that he had recorded statements of 28 persons all of whom stated that no such incident as parading of Nitaben and her husband in the village with garlands of chapels or slates or handcuffing was seen by them. The learned counsel for the petitioner had refuted the said finding and submitted that a large number of persons were willing to give their statements about the incident and had produced a statement of large number of people running into more than 100 in support of his submission. This Court recorded that the Dy.S.P. had not recorded the statement of the doctor who had treated Nitaben with history of assault nor of the victims nor had he recorded the statement of the journalist who has made the news report. This Court was constrained to observe about the partisan attitude of the Dy.S.P. in making inquiry and recording statements and after recording the finding that the district police machine had utterly failed to perform its public duty honestly and impartially, this Court entrusted the inquiry to the learned Sessions Judge, Bhavnagar in the following terms:-

"It is absolutely necessary that this enquiry into the incident of assault, arrest, parading,

handcuffing, chappal garlanding etc. be directed to be done by the learned Sessions Judge, Bhavnagar, who shall submit a report to this Court. It will be open to him to visit the village and record statements and/or to enquire in any other manner or at place(s) he thinks proper. If the witnesses think that their statements be recorded elsewhere and not in the village, that also will be open to the learned Sessions Judge to consider.

In the interest of this enquiry, it is absolutely necessary that the Dy.S.P., P.S.I. and the lady Head Constable are kept away from the District. The State is directed to see that these officials are immediately so placed.

It is hoped that the learned Sessions Judge would be able to spare time and complete the enquiry and make the report to this Court as expeditiously as possible and preferably by 26.8.1997. Adjourned to 28.8.1997.

The arrest of the complainant lady-Nitaben Goswami in dark hours at 4.00 a.m. was not only contrary to the provisions of the Criminal Procedure Code, but she having been kept in custody till the end of the day was also not at all justified and all these show that the police was acting in partisan manner. It would be open to the Sessions Judge to take assistance of such Agencies as he thinks proper including CID (Crime) or any voluntary agency. The State shall see that all the necessary facilities are given to the learned Sessions Judge to complete the enquiry in time. A xerox copy of this paper-book and order to be sent to the Sessions Judge with the writ."

#. Before the learned Sessions Judge submitted his report dated August 21,1997, an affidavit dated August 14, 1997 was filed by 12 residents of village Dadva. In that affidavit filed before this Court, it was stated that when the learned Sessions Judge had gone to the village on August 9 and 10, 1997, at that time more than 25 persons were prevented from meeting the learned Sessions Judge by a mob of more than 100 persons and there was continuous harassment and threats and even stone throwing and an environment of terror was created to discourage the village people from giving statements, but the police did not do anything and PSI Solanki had

remained continuously present (even though he had already been suspended on August 5, 1997) and encouraged the people of the other community to resort to unlawful activities. It was further stated that even in the Sessions Court at Bhavnagar, 25 to 30 persons had gone from the village to give their statements, but there also they were prevented in and outside the Court premises by a mob, a few of them with lethal arms preventing the persons from appearing and giving statements before the learned Sessions Judge. It was further stated that although the police officers involved were required to be kept away from the district, all these officers were very much in the district and obstructed the course of investigation and justice.

It is pertinent to note that on August 13, 1997, the petitioner had also filed Misc. Criminal Application No. 4533 of 1997 to direct the authorities to take adequate measures to allow people of Dadva village to take part in the inquiry conducted by the learned Sessions Judge in free, secure and peaceful environment and making grievance about the presence of PSI Solanki and also making the aforesaid grievances. It is stated in the said affidavit that when the learned Sessions Judges had visited the village in connection with the atrocities against Nitaben and her husband, they were surrounded by the members of the Darbar-Rajput community and when they went to the place where the learned Sessions Judge was recording the statement, the witnesses were threatened with dire consequences after the Court is over. The learned Sessions Judge had recorded the statements on August 9 & 10, 1997 for more than 3 hours. The members of Darbar community had formed a long queue before Nitaben's witnesses could go there. They were prevented from making statements before the Court. The youth from the Darbar Community had started telling people that those who appear before the Court in support of Nitaben will be severely beaten and will be shot, if necessary. Even on August 12, 1997, when they went to the Court at Bhavnagar as notified in the public notice, 30-40 people from Darbar Community were already there in front of the Court room and as soon as the people were called, half of them formed a long queue and half of them stood out and stood besides them with threatening gestures. Hence, Nitaben's witnesses could not give statements and they were followed wherever they went. Even PSI Solanki, under suspension for the incident in question, was visiting the village Dadva in simple dress and attending the meetings held by the Darbar Community every day in the evenings. Admittedly, PSI Solanki belonging to the Darbar-Rajput community had created the

aforesaid atmosphere of intimidation and terror in the village so as to frighten the witnesses supporting Nitaben. Even lady constable Savitaben was remaining present and she was also present at the Bhavnagar Court on August 12, 1997, threatening Nitaben's witnesses outside the Court and even inside.

#. The learned Sessions Judge submitted his report dated August 21, 1997 to this Court with the following observations and conclusions.

(i) The statements of several persons were recorded at the primary school in village Dadva on August 9 and 10, 1997 after issuing a public notice to that effect in the newspaper dated August 6, 1997. Notice was also placed in the primary school that further inquiry will be held at Bhavnagar from August 11 to 14, 1997. On August 9, 1997, Dineshpuri Goswami and two of his witnesses had given their statements, but Nitaben had not given her statement. But on August 12, 1997, Nitaben and her husband Dineshpuri had met the learned Sessions Judge in his chamber requesting him to take the statements of their witnesses in a private place and that also without informing the date and place in public notice, requesting that other persons of the village should not come to know that the statements of her witnesses were to be recorded by the learned Sessions Judge. That request was rejected on the ground that it would be against the principles of law. Once again public notice was published in the newspaper dated August 17, 1997. The learned Sessions Judge also observed that inspite of several opportunities given to her, Nitaben did not give her statement.

(ii) Nitaben and her husband have filed as many as 11 complaints against several persons from 1991 to 1995 at Umralla Police Station or at Bhavnagar Police Station and 5 cases were filed against Nitaben and her husband in the years 1995, 1996 and 1997. These persons are involved in so many criminal cases, but they have not made any complaint before the learned Magistrate at Vallabhipur when they were produced at 9.00 P.M. on July 13, 1997.

(iii) Nitaben and her husband were arrested at village Melana during night hours and they were taken to Umralla Police Station at about 4.00 A.M. on July 13, 1997. It was not necessary to arrest a woman accused during night hours and it was also against the provisions of law. The dispute had taken place between Savitaben and Nitaben at Bhavnagar and cross complaints were filed by them and lady constable Savitaben was smarting under the grudge against Nitaben and her husband Dineshpuri. However, PSI

Solanki had no interest in the alleged incident.

(iv) Though statements of 38 persons were recorded and oral inquiry was made of 168 persons of different communities of village Dadva, out of them only three persons have come forward to support the story of the alleged incident. Dineshpuri, husband of Nitaben, had naturally supported the story of the alleged incident, but why Nitaben and other persons have not come forward to support the say of the alleged incident ? The say of the alleged incident, therefore, appears to be incorrect.

#. Looking to the grievances of Nitaben and her witnesses, the Law Officer of this Court was directed to record the statements of Nitaben and her witnesses and accordingly the statements of Nitaben and 22 witnesses were recorded by the Law Officer of this Court on August 30, 1997. Obviously, in view of the grievance made by Nitaben on behalf of her witnesses and herself earlier before the learned Sessions Judge and thereafter before this Court, the statements of the above witnesses were recorded without any prior intimation to the respondents or to the other village people. All these witnesses from village Dadva supported the statements made in the petition that Nitaben and her husband Dineshpuri were handcuffed, tied up with ropes and were paraded with chapples and with slates hanging around their necks and that the entire incident took place in the presence of police personnel and that when this incident had happened there was a big crowd of 150 to 200 persons. They also stated that they could not give their statements before the learned Sessions Judge in view of the atmosphere of intimidation created by the other group. In view of the aforesaid grievances, on September 9, 1997, this Court issued Suo Motu notice for contempt of Court numbered as Misc. Criminal Application No. 4967 of 1997.

AFFIDAVITS OF THE POLICE PERSONNEL

#. Copies of the aforesaid statements recorded by the Law Officer of this Court were made available to the respondents through their respective counsel. Affidavits in reply have been filed by the District Superintendent of Police Anil Pratham, Dy. S.P. Jotangia, PSI D.K. Solanki and Constable Savitaben. The D.S.P. has stated that PSI D.K. Solanki, in-charge of Umralla Police Station was suspended on August 5, 1997, while constable Savitaben Chauhan, Dy.S.P. Jotangia and Circle Police Inspector, Botad M.M. Parmar have all been transferred out of Bhavnagar District.

##. According to the D.S.P., the preliminary inquiry in the allegations regarding arrest of Nitaben was entrusted to Jotangia, Dy.S.P. But since the report submitted by the said officer was not found to be satisfactory by this Court, the D.S.P. had entrusted the inquiry to R.J. Sawani, another Dy.S.P. in the district. In the meantime, since this Court had entrusted the inquiry to the learned District & Sessions Judge at Bhavnagar, the police had provided the bandobast at the time of inquiry and that protection was also provided to Nitaben and her husband. It is further submitted that he had also asked the learned District Judge at Bhavnagar about the security provided at the time of inquiry and no grievance was made by the learned Sessions Judge. On the contrary, by his letter dated September 29, 1997, the learned Sessions Judge has expressed his satisfaction with regard to the police bandobast and it was stated in the said letter that the learned Sessions Judge did not find any disturbance or interference in the inquiry at any time. The learned Sessions Judge was provided with armed guards with control mobile.

##. Respondent No. 4 - D.K. Solanki, who is presently under suspension, in his affidavit dated November 17, 1997 (Page 70) has denied that he had requested Nitaben to take care of the affairs of the temple in absence of the pujari. It is his case that he received information that Nitaben and her husband alongwith other persons had forcibly taken over possession of the temple. According to him, he had received information that Nitaben and her husband had forcibly locked up the doors of the temple and villagers were not permitted to offer their prayers in the temple and, therefore, there was a tense situation at village Dadva and he had gone to village Dadva alongwith police party on July 4, 1997. Thereafter, on July 7, 1997, the son of pujari of the temple had made a complaint against Nitaben and her husband and, therefore, a complaint at C.R. No. 38/97 for the offences punishable under IPC Secs. 296, 506(2), 504 and 114 and under Sec. 135 of Bombay Police Act was registered at about 8.45 P.M. Thereafter, he started investigation into the matter and on July 7, 1997 at about 10.00 P.M. a wireless message was sent to D.S.P. for arranging a lady constable since one of the accused (Nitaben) was a lady. On July 8, 1997 he had gone to village Dadva and recorded statements of various persons as a part of his investigation. PSI Solanki pleads his ignorance of what happened after July 8, 1997 till the night of July 12, 1997. According to him, on July 12, 1997, he received information that

Nitaben and her husband were hiding themselves in village Melana and, therefore, with police party he had gone to village Melana in the early morning of July 13, 1997 and arrested Nitaben and her husband at 4 O'clock that morning. Thereafter, they were taken to Umralla Police Station and interrogated during the course of the day and were asked about the weapons used in the offence. According to him, Dineshpuri expressed his willingness to show the place where the weapons used in the offence were concealed and, therefore, Dineshpuri, Nitaben's husband was taken to village Dadva and in presence of panchas muddamal sword and knife were recovered from the house of Dineshpuri. The said process was completed at about 8.00 P.M. and thereafter the accused was brought back to Umralla Police Station and Nitaben and her husband were produced before the learned J.M.F.C., Umralla who released the accused on bail. PSI Solanki has completely denied the allegations about handcuffing or tieing of hands with ropes or wearing of hanging slates or parading of Nitaben and her husband in the village.

The PSI has submitted that since Nitaben had filed a criminal complaint against the police personnel before Umralla Police Station being C.R. No. 50/97 for the offences punishable under IPC Secs. 323, 504, 500, 342, 220 and 114 and investigation into the said offences is going on, the present proceedings may be dropped. He has also relied on the report of the learned Sessions Judge. He has also denied the allegations made by Nitaben and her people about his presence (i.e. presence of PSI Solanki) in the village Dadva at the time of inquiry by the learned Sessions Judge on August 9 and 10, 1997. It is submitted that on August 10, 1997, his headquarter was shifted from Bhavnagar to Amreli and that on August 9 & 10, 1997 he was at Bhavnagar "A" Division Police Station and not present either at village Dadva on August 10, 1997 or at the Sessions Court at Bhavnagar on August 12, 1997. He has further given the names of the police officers and constables who were constantly with the learned Sessions Judge at the time of inquiry on August 9 and 10, 1997 and at Bhavnagar on August 12, 1997. It is his case that none of the police personnel had seen PSI Solanki or 20-25 persons supporting Nitaben who had gone to give their statements to the learned Sessions Judge. PSI Solanki has relied on the report of the learned Sessions Judge which does not hold him to be guilty of the allegations made against him.

##. Savitaben Harjibhai, lady constable has filed her affidavit in reply to the contempt petition (Misc. Criminal Application No. 4967 of 1997) and has denied

the allegations against her about her presence in the village Dadva on August 9 and 10, 1997 and before the Sessions Court at Bhavnagar on August 12, 1997.

##. Dy.S.P Jotangia has filed his affidavit in reply to the contempt petition and has submitted that he had submitted the interim report dated July 28, 1997 in an impartial manner and has submitted that his stand is vindicated by the report of the learned Sessions Judge. He has also denied the allegations about interference with the inquiry conducted by the learned Sessions Judge.

DISCUSSION

ARREST OF NITABEN DURING NIGHT HOURS

##. Although there is some dispute about the time of arrest whether it was around midnight between July 12 and 13 or whether it was 4 O' Clock in the early hours of July 13, the fact that both Nitaben and her husband Dineshpuri were arrested in the early hours of July 13, 1997 before sunrise are not disputed. Neither PSI D.K. Solanki nor lady constable Savitaben had obtained prior permission of any superior officer nor did they give any justification whatsoever for arresting Nitaben after sunset and before sunrise, in contravention of specific instructions contained in Circular No. MIS-1080-GOI-25-D, dated 31.3.1980 issued by the State of Gujarat in the Home Department, the relevant portion of which reads as under :-

".....It is also necessary to ensure that except in unavoidable circumstances, no woman should be arrested between sunset and sunrise. If one has to be arrested during night, the police officer must obtain prior permission of his next superior officer and furnish written reasons therefor. If the circumstances make the arrest imminent, the justification for making arrest during night should be reported to the next superior officer, without delay.

In bailable cases, bail should be granted without delay. If the offence is non-bailable, the arrested woman should be remanded to judicial custody with utmost expedition."

##. In this connection, we also not lose sight of the fact that Nitaben and her husband were arrested on the night between 12th and 13th July in connection with the

complaint lodged on 7th July, 1997 for the alleged offence that Nitaben and her husband had threatened to kill the wife of priest of the temple with sword and knife on July 4, 1997, when, admittedly, Nitaben and her husband themselves were under armed police protection since Nitaben's husband was assaulted within the compound of the criminal court at Bhavnagar after recording of evidence of Nitaben in the criminal case for trial for the offence of gang rape of Nitaben by certain persons from village Dadva. We can also not lose sight of the fact that even according to the police version, on account of the tense situation in village Dadva on July 8, 1997, Nitaben and her husband were required by Circle Police Inspector Parmar to leave village Dadva and on July 10 & 11, 1997, Nitaben and her husband were very much in Bhavnagar protesting before the office of the Collector and the D.S.P. against harassment being meted out to them by the relatives of the accused of the gang rape case and their associates in village Dadva. In view of this background, it is difficult to fathom as to what prompted PSI Solanki and lady constable Savitaben to arrest Nitaben during night hours between July 12 and 13, 1997 or even to arrest her husband during the said period. PSI D K Solanki and lady constable Savitaben had thus clearly violated the directions contained in the aforesaid Government Circular dated 31.3.1980 as well as the directives of the Hon'ble Supreme Court reiterated from time to time prohibiting the police officers from arresting a woman accused after sunset and before sunrise.

HANDCUFFING AND OTHER INDIGNITIES

##. The next question is whether Nitaben was taken to village Dadva and whether Nitaben and her husband or either of them were handcuffed and publicly paraded in village Dadva or subjected to any other inhuman treatment like being garlanded with shoes by or with the connivance of the police officials. The controversy on this issue has been serious on account of the report dated August 21, 1997 of the learned Sessions Judge which report has been heavily relied upon by the learned counsel for the respondents.

##. It is true that except the first three witnesses including the husband of Nitaben, other witnesses who gave their statements before the learned Sessions Judge did not support the case of the petitioner about the alleged incident of handcuffing, parading etc. in the evening of July 13, 1997 at village Dadva. We regret to note that the learned Sessions Judge declined to accede

to the request of Nitaben and her witnesses that in view of the atmosphere of intimidation created by the other group consisting of relatives of the accused of the gang rape case and persons belonging to their community, Nitaben's witnesses were too scared to come forward to give their statements before the learned Sessions Judge in presence of the village people belonging to the other community (i.e. Rajputs) and, therefore, their statements may be recorded without giving any public notice about the date, time and place of recording their statements. The learned Judge refused to accept the request of Nitaben only on the ground that the request was against the principles of law. The learned Sessions Judge ought to have appreciated that he was not required by this Court's order dated July 29, 1997 to hold any judicial inquiry but only to hold a fact finding inquiry. Even those witnesses who gave their statements before the learned Sessions Judge at village Dadva on August 9 & 10, 1997 and those witnesses who subsequently gave their statements before the learned Sessions Judge at Bhavnagar were not to be cross-examined by either side and in fact they were not cross examined. The witnesses who were subsequently permitted to give their statements before the Law Officer of this Court had made their grievance through their affidavits and through the application and affidavit filed immediately on August 13, 1997 and August 14, 1997 respectively that the relatives of the accused of the gang rape case and the persons of their community had created an atmosphere of terror and intimidation in their village and that they had expressed their apprehension before the learned Sessions Judge while making the request to record the statements of her witnesses at a private place without notifying the date and place in any public notice that the statements of her witnesses were to be recorded by the learned Sessions Judge. It is also necessary to place some emphasis on this aspect because this Court had specifically asked the learned Sessions Judge to hold the inquiry in any manner and at any place he thought fit.

"It is absolutely necessary that this enquiry into the incident of assault, arrest, parading, handcuffing, chappal garlanding etc. be directed to be done by the learned Sessions Judge, Bhavnagar, who shall submit a report to this Court. It will be open to him to visit the village and record statements and/or to enquire in any other manner or at place(s) he thinks proper. If the witnesses think that their statements be recorded elsewhere and not in the

village, that also will be open to the learned Sessions Judge to consider.

In the interest of this enquiry, it is absolutely necessary that the Dy.S.P., P.S.I. and the lady Head Constable are kept away from the District. The State is directed to see that these officials are immediately so placed".

Except the order of suspension passed on August 5, 1997 in respect of PSI Solanki, no other police official was transferred. Even PSI Solanki's headquarter was not fixed outside Bhavnagar. It is true that the DSP could not have made any transfer outside the District, but the order was passed after hearing the learned APP for the State. Be that as it may, it is safe to proceed on the footing that Nitaben and her witnesses did express their apprehension about the atmosphere in the village and the attempts of the persons belonging to other group to prevent them from giving their statements before the learned Sessions Judge. It is unfortunate that the learned Sessions Judge has not even referred to any such apprehensions, while referring to the request made by Nitaben to record the statements of her witnesses in some secrecy. At least the learned Sessions Judge was expected to refer to the grounds on which Nitaben had made the request to record the statements of her witnesses without advance public notice. It is equally unfortunate that the learned Sessions Judge and the senior police officers (the DSP and the DySP) have referred to the bandobast as if the learned Sessions Judge was under threats and not Nitaben's witnesses.

##. Another extra-ordinary circumstance which is required to be noted is that about 48 persons of village Dadva had gone to the learned Sessions Judge for giving their statements to say that the alleged incident had not taken place i.e. to give their negative evidence. This itself ought to have put the learned Sessions Judge on guard before accepting the version of such witnesses at face value that the alleged incident had not taken place about handcuffing and parading in public of Nitaben's husband or of both Nitaben and her husband. It, therefore, appears that the grievance made by Nitaben's witnesses in their affidavit dated August 14, 1998 did have some substance.

##. One more circumstance which supports the case of the petitioner and which exposes the case of the respondents is the statement made by Narsinhbhai Nanubhai

Ghelda (Page 104) before the learned Sessions Judge on August 9, 1997. Narsinhbhai was President of Vallabhipur Taluka Panchayat of Bhavnagar District between February 24, 1987 and October 31, 1993. He is a social worker and at present a member of Vallabhipur Taluka Panchayat of Bhavnagar District. He is a Karadia Rajput by caste. Since Nitaben is the Sarpanch of Dadva village and Narsinhbhai is a member of Vallabhipur Taluka Panchayat and also President of that Taluka Panchayat, Narsinhbhai knows Nitaben since last 7 to 8 years because both are in the political field. He has stated that on July 7, 1997, he was informed about dispute between Nitaben and the priest of the temple in village Dadva and, therefore, he had gone to that village on July 8, 1997. Nitaben had told him that daily income of the temple is about Rs. 2,000 to 2,500 but the income was being wrongly shown in the summary account by the priest and, therefore, as the Sarpanch of the village, she drew the attention of the Government to these irregularities and that she had also sent the entire income of the temple to the Mamlatdar, Umralla between July 5 and 7, 1997 by money orders and that whatever was received by way of gifts was kept in the temple. Narsinhbhai had tried to bring about the compromise between the priest and Nitaben. Even at that time, there was a mob hooting and shouting and throwing of stones and that Nitaben complained before the police personnel present there and Nitaben and her husband left the village leaving their house open.

##. What is more important that emerges from the statement of Narsinhbhai is that on July 13, 1997, he had received information from the people that the police had come during night hours between July 12 and 13, 1997 to inquire about Nitaben and therefore, he had gone to the STD public call office at Vallabhipur and telephoned Umralla Police Station for confirmation. When one Babubhai Solanki went to Narsinhbhai and told him that Nitaben was arrested and put in lockup and was to be paraded with handcuffing in the village at about 5 O'clock in the evening Narsinhbhai telephoned the Dy.S.P. and told him that Nitaben is a woman accused, pregnant and the offence alleged against her was not so grave that she was required to be arrested at night and that it would be better that she may not be paraded in the village. He even requested the Dy.S.P. that sending Circle Police Inspector Parmar (who was proposed to be sent by Dy.S.P. Jotangia) would not suffice and, therefore, the Dy.S.P. may himself remain present, but Dy.S.P. Jotangia told Narsinhbhai not to worry as he was sending message to Umralla Police Station not to parade them or to torture them. Thereafter, Dy.S.P., Botad

Jotangia telephoned Umralla Police Station conveying the representation of Narsinhbhai Ghelda. Narsinhbhai also telephoned CPI Parmar through STD booth informing him about the aforesaid discussion. Thereafter Narsinhbhai telephoned Umralla Police Station from the STD telephone booth informing them about the aforesaid discussion. All these STD calls were metered and the extracts of the register showing the aforesaid STD calls are already on record. Narsinhbhai had undertaken the aforesaid exercise because he was informed by the village people that lady constable Savitaben had stated that she was going to handcuff and parade Nitaben and that Nitaben and her husband were arrested by the police on July 12, 1997 between 12.00 midnight and 1.00 A.M. from the residence of Abeysing of Melana village. The learned Sessions Judge has also mentioned in his report that lady constable Savitaben was the villain of the piece and she was out to wreck vengeance on Nitaben, as Nitaben had filed complaint against lady constable Savitaben regarding beating them. It is, therefore, more probable that Nitaben was also taken by the police party including Savitaben, to village Dadva and subjected to handcuffing and other indignities. If Nitaben was not to be taken to Dadva and only her husband was to be taken to Dadva, there was no reason not to produce her before the learned Magistrate in the morning of 13th July, 1997 because 24 hours is the outer limit for bringing the accused before the learned Magistrate. In either event, therefore, there was unnecessary delay on the part of the police officer in taking Nitaben before the learned Magistrate.

##. It is also required to be noted at this stage that a perusal of the police station diary of Umralla Police Station reveals that in the afternoon of July 13, 1997 Nitaben's husband had complained of chest pain and, therefore, he was taken to the Government Hospital at about 3.30 P.M. at Umralla where he was examined by the Medical Officer and given some treatment and thereafter he was taken to village Dadva at about 6.20 P.M. Even if we are to proceed on the basis that only Nitaben's husband was taken to village Dadva in the evening of July 13, 1997, unaccompanied by Nitaben, it is not at all possible to see any justification for handcuffing of Nitaben's husband in the evening of July 13, 1997, when he was on hunger strike on July 10 & 11, 1997 and when he had complained of pain in the chest and was required to be taken to the hospital on that very afternoon and just three hours before he was taken to village Dadva. The handcuffing of Nitaben's husband was also absolutely unjustified. The defence pleaded on behalf of PSI Solanki and lady constable Savitaben that Nitaben's

husband was accused of a serious offence under Sec. 506 (2) of the IPC and was, therefore, required to be handcuffed is required to be considered in the backdrop of the pendency of the criminal case for gang rape of Nitaben and that during the trial of that offence after her evidence was recorded, her husband was assaulted within the compound of the criminal court; that even when they were under police protection, they were required to leave the village on July 8, 1997 by a violent mob which included relatives of the accused of the gang rape case and that Nitaben and her husband were on hunger strike on July 10 & 11, 1997 before the Office of the Collector and D.S.P. at Bhavnagar where also they complained about the assault and ill-treatment by the police including the lady constable and that there was no complaint about their absconding. We have, therefore, no hesitation in coming to the conclusion that not only the arrest of Nitaben during night hours between July 12 and 13, 1997 was absolutely unjustified but was unconstitutional and violative of her fundamental rights under Article 21 of the Constitution and so also the handcuffing of Nitaben's husband in the evening of July 13, 1997 was also absolutely unjustified, illegal and unconstitutional and violative of his fundamental rights under Article 21 of the Constitution.

##. Looking to the entire sequence of events as alleged by Nitaben and her husband as tested in light of the material on record including the version given by PSI Solanki and lady constable Savitaben, we are inclined to accept the version of Nitaben and her husband that Nitaben and her husband were both subjected to handcuffing and tying with ropes and that both Nitaben and her husband were paraded in village Dadva in the evening of July 13, 1997 with ropes tied to their hand and that dehumanizing acts of garlanding them with shoes/chappels and putting slates around their necks did take place. This finding is for the purposes of the present petition which is a public interest petition in the domain of public law for enforcement of the constitutional rights of Nitaben and her husband under Articles 14, 19 and 21 of the Constitution.

CASE LAW

##.1 In the case of Bhim Singh V. State of J & K, AIR 1986 SC 494, the Supreme Court has held that the arrest and imprisonment with mischievous or malicious intent is against the rights of the prisoner subjected to such arrest and imprisonment and the Supreme Court awarded compensation of Rs. 50,000/-.

23.2 In the case of State of Maharashtra vs. Ravikant S Patil, (1991) 2 SCC 373, the Supreme Court observed that when an undertrial prisoner was handcuffed and both his arms were tied by a rope and he was taken through the streets, the undertrial prisoner was subjected to an unwarranted humiliation and indignity which cannot be done to any citizen of India. The prisoner was awarded compensation of Rs. 10,000/- which was ordered by the Supreme Court to be paid by the State of Maharashtra and left to the concerned authorities to hold inquiry against the concerned police officials. In that case, the the concerned police official was not given any opportunity of being heard and, therefore, a direction by the High Court to the concerned police official to make the payment was modified and the compensation was ordered to be paid by the State Government subject to its right to hold an inquiry and to take action against the concerned police officials.

23.3 In the case of Prem Shankar Shukla vs. Delhi Administration, (1980) 3 SCC 526, the Supreme Court held that handcuffing an undertrial prisoner was permissible only if there was a well-grounded basis for drawing a strong inference that the prisoner is likely to jump jail or break out of custody or play the vanishing trick. The belief in this behalf must be based on antecedents which must be recorded and proneness to violence must be authentic. Vague surmises or general averments that the undertrial is a crook or desperado, rowdy or maniac, cannot suffice. In short, save in rare cases of concrete proof readily available of the dangerousness of the prisoner in transit - the onus of proof of which is on him who puts the person under irons - the police escort will be committing personal assault or mayhem if he handcuffs or fetters his charge. It is disgusting to see the mechanical way in which callous policemen, in cavalier fashion, handcuff prisoner in their charge, indifferently keeping them company assured by the thought that the detainee is under `iron restraint.....

"Since there are other ways of ensuring security, it can be laid down as a rule that handcuffs or other fetters shall not be forced on the person of an undertrial prisoner ordinarily. ... We lay down as necessarily implicit in Articles 14 and 19 that when there is no compulsive need to fetter a person's limbs, it is sadistic, capricious, despotic and demoralizing to humble a man by manacling him. Such arbitrary conduct surely slaps Article 14 on the face. The minimal freedom of movement which even a detainee is entitled to under

Article 19 (see Sunil Batra) cannot be cut down cruelly by application of handcuffs or other hoops. it will be unreasonable so to do unless the State is able to make out that no other practical way of forbidding escape is available, the prisoner being so dangerous and desperate and the circumstances so hostile to safe keeping....."

23.4 In the case of Citizens for Democracy vs. State of Assam, (1995) 3 SCC 743, the Supreme Court observed as under :-

"Where the police or the jail authorities have well-grounded basis for drawing a strong inference that a particular prisoner is likely to jump jail or break out of the custody then the said prisoner be produced before the Magistrate concerned and a prayer for permission to handcuff the prisoner be made before the said Magistrate. Save in rare cases of concrete proof regarding proneness of the prisoner to violence, his tendency to escape, he being so dangerous/desperate and the finding that no other practical way of forbidding escape is available the Magistrate may grant permission to handcuff the prisoner."

In the same case the Supreme Court also noted with concern that "inspite of the clear pronouncements of this Court in Batra case and Shukla case, the authorities have miserably failed to follow the law laid down by this Court in the matter of handcuffing of prisoners. The directions given by this Court are not being followed and are being treated as a pious declaration. We take judicial notice of the fact that the police and the jail authorities are even now using handcuffs and other fetters indiscriminately and without any justification. It has, therefore, become necessary to give binding directions and enforce the same meticulously".

The Apex Court has declared, directed and laid down as a rule that handcuffs shall not be forced on a prisoner - convicted or undertrial - and that where the police or the jail authorities have well-grounded basis for drawing a strong inference that a particular prisoner is likely to jump jail or break out of the custody, then also the Court has provided certain safeguards. The final directions given in the said decision are as under:-

" We declare, direct and lay down as a rule

that handcuffs or other fetters shall not be forced on a prisoner - convicted or undertrial while lodged in a jail anywhere the country or while transporting or in transit from one jail to another or from jail to Court and back. The police and the jail authorities, on their own, shall have no authority to direct the handcuffing or any inmate of a jail in the country or during transport from one jail to another or from jail to court and back.

Where the police or the jail authorities have well-grounded basis for drawing a strong inference that a particular prisoner is likely to jump jail or break out of the custody then the said prisoner be produced before the Magistrate concerned and a prayer for permission to handcuff the prisoner be made before the said Magistrate. Save in rare cases of concrete proof regarding proneness of the prisoner to violence, his tendency to escape, he being so dangerous/desperate and the finding that no other practical way of forbidding escape is available, the Magistrate may grant permission to handcuff the prisoner.

In all the cases where a person arrested by police, is produced before the Magistrate and remand - judicial or non-judicial - is given by the Magistrate the person concerned shall not be handcuffed unless special orders in that respect are obtained from the Magistrate at the time of the grant of the remand.

When the police arrests a person in execution of a warrant or arrest obtained from a Magistrate, the person so arrested shall not be handcuffed unless the police has also obtained orders from the Magistrate for the handcuffing of the person to be so arrested.

Where a person is arrested by the police without warrant the police officer concerned may if he is satisfied, on the basis of the guidelines given by us in para above, that it is necessary to handcuff such a person, he may do so till the time he is taken to the police station and thereafter his production before the Magistrate. Further use of fetters thereafter can only be under the orders of the Magistrate as already indicated by us.

We direct all ranks of police and the prison authorities to meticulously obey the above-mentioned directions. Any violation of any of the directions issued by us by any rank of police in the country or member of the jail establishment shall be summarily punishable under the Contempt of Court Act apart from other penal consequences under law. The writ petition is allowed in the above terms. No costs.

Copy of this judgment be sent to Government of India, Ministry of Home Affairs and to all the State and Union Territory Governments through Home Secretaries.

23.5 In the case of In re: M.P. Dwivedi & others, AIR 1996 SC 2299, the Apex Court reiterated the aforesaid principles and proceeded to consider whether the justification for handcuffing the prisoner in that particular case offered by the police officials stood scrutiny or not.

##. In the case of Nilabati Behera vs. State of Orissa, AIR 1993 SC 1960, the Supreme Court has observed that -

"The public law proceedings serve a different purpose than the private law proceedings. The relief of monetary compensation, as exemplary damages, in proceedings under Article 32 by this Court or under Article 226 by the High Courts, for established infringement of the indefeasible right guaranteed under Article 21 of the Constitution is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting "compensation" in proceedings under Article 32 or 226 of the Constitution seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalising the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment

of compensation in such cases is not to be understood as it is generally understood in a civil action for damages under the private law, but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty of not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction and/or prosecute the offender under the penal law.

This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course, has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law through appropriate proceedings".

(emphasis supplied)

##. From a conspectus of the aforesaid decisions of the Apex Court, we see no room for doubt that even where criminal cases or departmental enquiries are pending against the police officials who are alleged to have committed violation of a person's rights under Article 21 of the Constitution by resorting to unjustified or malafide actions and imprisonment and/or handcuffing of a person, not warranted by the facts and circumstances of the case, the Court can hold an inquiry into such allegations for the limited purpose of deciding the matter in the domain of public law and the Court can direct the Government to pay compensation to the victim in a proceeding under Article 226 of the Constitution.

##. We have also considered the concern voiced in para 32 of the judgement of the Apex Court in the case of D.K. Basu vs. State of W.B. (AIR 1997 SC 610) (Para 31 in 1997 (1) SCC 416). We are satisfied that there is no scope for such concern in the facts of the instant case. Nitaben and her husband are not even alleged to be hardcore criminals like extremists, terrorists, drugpeddlers, smugglers or organized criminals.

So far as Nitaben is concerned, it is admitted that she was arrested during night hours. No ground whatsoever is shown which can even remotely justify this action. Far from being a hardcore criminal, she is stated to be a victim of gang rape and her husband Dineshpuri was assaulted by the accused after her evidence in the gang rape case was recorded. Even while under police protection, they were required to leave the village. Still they were both arrested during night hours between July 12 and 13, 1997 after they were on hunger strike on July 10 and 11, 1997 at Bhavnagar in front of the office of the Collector and D.S.P. Dineshpuri had suffered chest pain in the afternoon of 13th July when he was in police custody and thereafter taken to the Government hospital for treatment. Still he was handcuffed at 6.30 on that evening while being taken to and in village Dadva. These facts are clearly established. The facts which are seriously disputed are whether Nitaben was taken from Umralla Police Station to village Dadva and whether both Nitaben and her husband were handcuffed, tied with ropes and paraded in the village. As indicated earlier, we have believed the case put up by Nitaben and her husband for the purposes of this petition.

##. In view of the above, we direct the State of Gujarat to pay, within one month from today, Nitaben compensation of Rs. 10,000/(Rupees Ten thousand only) and another amount of Rs. 10,000/- (Rupees Ten thousand only) to her husband Dineshpuri Goswami as compensation. Rs. 20,000/(Rupees Twenty Thousand only) thus paid to Nitaben and Dineshpuri Goswami should be recovered from the concerned police officials. We make it clear that findings in this judgement are confined to this petition in the public domain for enforcement of the Constitutional rights of Nitaben and her husband and that the Court/authority dealing with the criminal/departmental actions against the concerned police officials shall hear and decide the same on the basis of the material which may be produced before them, without being influenced by the findings given or the

observations made in this judgement.

Rule is made absolute accordingly.

##. As far as Misc. Criminal Application No. 4533 of 1997 is concerned, the allegations against the police officers are about obstruction with the inquiry conducted by the learned Sessions Judge. Since the allegations are basically about the atmosphere allegedly created by private citizens on account of inaction or inadequate steps taken by the police officials, we close the proceedings without prejudice to any criminal/departmental action which may be taken against them in this behalf. Criminal Misc. Application 4533 of 1997 is also disposed of, since the main petition is disposed of.

(K. Sreedharan, C.J.)

(M.S. Shah, J.)